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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,249	02/19/2004	Walter Uebelacker	87072/1	2248
51108 7590 08/06/2008 DAVID L. KING, SR. 5131 N.E. COUNTY ROAD 340 HIGH SPRINGS, FL 32643				
EXAMINER				
ROZANSKI, MICHAEL T				
ART UNIT		PAPER NUMBER		
3768				
MAIL DATE		DELIVERY MODE		
08/06/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/708,249

Applicant(s)

UEBELACKER, WALTER

Examiner

MICHAEL ROZANSKI

Art Unit

3768

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-27 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 15 May 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
4) ☐ Interview Summary (PTO-413)
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____
Paper No(s)/Mail Date _____

DETAILED ACTION

Drawings

The drawings were received on 5/15/08. These drawings are accepted.

Claim Objections

Claim 10 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Specifically, the limitation regarding the membrane has been incorporated into independent claim 1 by amendment.

Claim 1 is objected to because of the following informalities: In line 7, "planar shocks wave" should read "planar shock waves." Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over de la Fonteljne (US 4,702,249).

De la Fonteljne discloses a therapeutic shockwave device comprising a reflector housing 1', a parabolic reflector 2' in the housing, and an energy source 3', 4' in the reflector for developing a planar shockwave formed by the parabolic reflector (col 2, lines 35-55; see figure 2). In another embodiment, the electrodes may take on a spherical shape such that the initially generated shockwave is spherical prior to being directed to the reflector (see figure 7). De la Fonteljne also teaches as old that prior art reflectors be closed with a membrane (col 2, lines 17-19). It would have been obvious to the skilled artisan to incorporate a membrane in order to facilitate coupling to a patient's body.

Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muller et al (US 4,608,983) in view of de la Fonteljne (US 4,702,249).

Muller et al disclose a reflector housing, an ellipsoidal reflector 6 inherently with two focal points F1 and F2, and an energy source wherein a spark discharges between two electrodes 24, 30 emanating in all directions within a liquid 4. The shockwaves hit the ellipsoidal reflector and are directed in a non-planar manner to a focal point in the tissue (col 3, line 45-col 4, line 48; see figure 1).

However, Muller et al do not disclose a parabolic reflector for developing planar shockwaves. In the same field of endeavor, de la Fonteljne teaches a therapeutic shockwave device comprising a reflector housing 1', a parabolic reflector 2' in the

housing, and an energy source 3', 4' in the reflector for developing a planar shockwave formed by the parabolic reflector (col 2, lines 35-55; see figure 2). In another embodiment, the electrodes may take on a spherical shape such that the initially generated shockwave is spherical prior to being directed to the reflector (see figure 7). De la Fonteljne also teaches as old that prior art reflectors be closed with a membrane (col 2, lines 17-19). It would have been obvious to the skilled artisan to incorporate a membrane in order to facilitate coupling to a patient's body.

It would have been obvious to the skilled artisan to modify Muller et al, to replace the ellipsoidal reflector with the parabolic reflector as taught by de la Fonteljne, because the characteristics of a shockwave reflecting off a parabolic surface as opposed to an ellipsoidal surface are well known in the art.

Response to Arguments

Applicant's arguments filed 5/15/08 have been fully considered but they are not persuasive. Applicant argues that de la Fonteljne or Muller/de la Fonteljne disclose that the planar waves are focused into a focal point and are not emanated through the membrane into the treatment area. However, de la Fonteljne teaches the reflector cavity may be closed with a membrane which is pressed against a patient's body (col 2, lines 17-19). As shown in Figure 2, there is a lens L located outside of and separate from the reflector and reflector housing that serves to focus the planar waves. However, it is evident that when the waves are not directed through the lens, then the waves will not be focused into a focal point. In addition, it is noted that the claims are

open-ended by using the term "comprising" and, therefore, all the claimed limitations are met even though an additional element (lens) is shown in the reference. It is also noted that the rejection regarding Muller/de la Fonteljne does not include the lens. In the instance, the ellipsoidal reflector of Muller is replaced with the parabolic reflector (but not the lens) of de la Fonteljne.

The newly submitted drawings have been accepted.

Please note the new claim objection that arises as a result of the amendments.

Examiner also notes that the application number in the header of the amended claim set is for a different application. 11/238,731 should be 10/708,249

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL ROZANSKI whose telephone number is (571)272-1648. The examiner can normally be reached on Monday - Friday, 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric F Winakur/
Primary Examiner, Art Unit 3768

MR